STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IRA V. WILSON,

Defendant-Appellant.

UNPUBLISHED
February 6, 1998

No. 196806
Recorder's Court
LC No. 96-001559

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). He was sentenced to two to twenty years' imprisonment as a second habitual offender, MCL 769.10; MSA 28.1082. Defendant now appeals as of right. We affirm.

Defendant first argues that the trial court committed reversible error when it failed to make an adequate and independent inquiry into his waiver of his constitutional right to a jury trial, and compounded its error in failing to obtain an independent waiver for the habitual offender charge. We disagree.

MCR 6.402 governs waiver of a jury trial, and provides, in part:

> Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

MCR 6.402 supersedes MCL 763.3; MSA 28.856, so that a written waiver of the right to trial by jury is no longer required. *People v Reddick*, 187 Mich App 547, 549; 468 NW2d 278 (1991). Nonetheless, in the present case, defendant completed a written waiver of trial by jury.

The transcript from the waiver hearing indicates that defendant: (1) knew that he had a right to a jury trial; (2) knew that he was giving up that right; (3) admitted that no one had threatened or promised him anything in return for giving up that right; and (4) freely and voluntarily gave up that right. Furthermore, defendant signed a written waiver stating that he had had the opportunity to consult with his attorney before waiving his rights. This last point is reinforced by defense counsel's signature on the same form, under a line that reads: "I have advised the above named defendant of his constitutional right to a trial by jury." Under these circumstances, we conclude that defendant understood that he had a right to a trial by jury, and voluntarily waived that right. *Reddick, supra* at 550. Defendant's additional argument, that the court also erred in failing to obtain an independent waiver of trial by jury for the habitual offender charge, is without merit. Defendant had no right to a jury trial on the habitual offender charge. MCL 769.13; MSA 28.1085; *People v Zinn*, 217 Mich App 340, 345; 551 NW2d 704 (1996).

Defendant next argues that he was denied effective assistance of counsel because his attorney failed to move for suppression of evidence seized at the time of his arrest. We disagree.

Because defendant failed to preserve this issue, our review is limited to the record. *People v Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985). There is no evidence in the record that suggests any impropriety in the seizure of the evidence. Counsel is not ineffective in failing to present a meritless motion. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991). Thus, defendant cannot show that he was denied the effective assistance of counsel.

Defendant also argues that there was insufficient evidence to prove his guilt beyond a reasonable doubt. We disagree.

> [T]o support a conviction for possession with intent to deliver less than fifty grams of cocaine, it is necessary for the prosecutor to prove four elements: (1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with intent to deliver. [*People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).]

"[I]ntent to deliver may be proven by circumstantial evidence and also may be inferred from the amount of controlled substance possessed." *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

Here, a police officer confiscated approximately thirty-three individually wrapped rocks of cocaine from the floorboard of the front seat of the car in which defendant was sitting. Another officer had already seen defendant take an item out of the same bag where the rocks were found. Under these circumstances, the trial court could properly infer an intent to deliver based on defendant's possession of a bag containing a large quantity of individually wrapped rocks of cocaine. *Ray, supra* at 708-709. The officers' observations of defendant's conduct immediately before his arrest provided additional circumstantial evidence of an intent to deliver. Considering the evidence in the light most favorable to

the prosecution, there was sufficient evidence to allow the trial court could to find defendant guilty of possession with intent to deliver beyond a reasonable doubt.

We also conclude that there was sufficient evidence to sustain defendant's conviction for possession of marijuana. The offense of possession of a controlled substance requires proof that defendant had actual or constructive possession of the substance. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). Constructive possession requires the right to control the narcotic and knowledge of its presence. *Wolfe, supra* at 519-520. Because the marijuana was in the same bag as the cocaine, and considering that the police had seen defendant take at least one item out of the bag, it is reasonable to conclude that defendant had knowledge of the presence of marijuana in the bag. Considering this evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented to sustain defendant's conviction for possession of marijuana.[1]

Defendant finally argues that no evidence was presented regarding any prior felonies and that, because the court sentenced him as a second offender, reversal is warranted. We decline to reverse on this issue. We note that defendant has abandoned this issue on appeal because he has merely stated a position without supporting authority; it is not up to this Court to discover and then to rationalize the basis of a party's claims. *People v U S Currency*, 158 Mich App 126, 130; 404 NW2d 634 (1986). Furthermore, defendant failed to provide this Court with a copy of his presentence investigation report. Thus, this issue is not properly before us.[2] *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995); MCR 7.212(C)(7).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Myron H. Wahls
/s/ Roman S. Gribbs

[1] While defendant states that there was insufficient evidence to support his *convictions*, he also appears to argue that the trial court erred in denying his motion for a directed verdict on the charge of possession with intent to deliver marijuana, of which he was eventually acquitted. Even were this argument properly presented, we would conclude that it is without merit. Taken in a light most favorable to the prosecution, the evidence regarding defendant's conduct before his arrest was sufficient to allow the trial court to infer an intent to deliver both the cocaine and the marijuana.

[2] We note that the record strongly suggests that there was information in the presentence investigation report supporting defendant's conviction as a second offender, and that defense counsel conceded this point at a bench conference: "The Court has discussed this matter with counsel at bench side. This information or this enhancement charges a third felony when in fact that appears to be in error. The Court will find that the defendant, that this is a second felony conviction."